

Honorable Judge Benjamin Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLYDE RAY SPENCER

Plaintiff,

v.

DETECTIVE SHARON KRAUSE, and
SERGEANT MICHAEL DAVIDSON,

Defendants.

No. C11-5424BHS

**PLAINTIFF'S MOTION FOR
LEAVE TO TAKE TRIAL
DEPOSITIONS OF MENONA
LANDRUM AND ANN LINK,
Ph.D.**

**NOTICE DATE: Friday,
November 22, 2013**

NOW COMES Plaintiff, Clyde Ray Spencer, by and through his attorneys, Kathleen T. Zellner & Associates, P.C., and hereby moves this Honorable Court for leave to take trial depositions of Menona Landrum and Ann Link, Ph.D., and to introduce those depositions as evidence at trial. In support of this motion, Plaintiff states as follows:

- 1) Trial in this matter is scheduled to proceed January 7, 2014.
- 2) Plaintiff has recently learned that Menona Landrum and Dr. Ann Link are unavailable to testify at trial.
- 3) Ms. Landrum is willing to testify in these proceedings. However, due to her age and living circumstances, travelling from Napa, California, where she currently resides, to Tacoma, Washington, would pose an undue hardship. Ms. Landrum is 85 years old. She

PLAINTIFF'S MOTION FOR LEAVE TO TAKE TRIAL
DEPOSITIONS OF MENONA LANDRUM AND
ANN LINK, Ph.D. (C11-5424BHS) — 1

Kathleen T. Zellner & Associates, P.C.
LAW OFFICES
1901 Butterfield Road
Suite 650
Downers Grove, Illinois 60515
630.855.1212 • FAX 630.855.1111

1 ambulates by use of a walker, and it is very difficult for her to walk any significant distance.
2 Ms. Landrum is also the sole caretaker for her husband, Joseph Landrum. Mr. Landrum is 84
3 years old. Mr. Landrum has a heart condition and, like his wife, can only ambulate with the aid
4 of a walker. *See* Declaration of Menona Landrum in Support of Plaintiff's Motion for Leave to
5 Take Trial Depositions of Menona Landrum and Ann Link, Ph.D.

6 4) Dr. Link, a psychologist, resides and practices in the state of California. Dr.
7 Link is also willing to testify in these proceedings. However, Dr. Link is unavailable for trial
8 due to her patient schedule, and because she will be traveling outside of the country for several
9 weeks. *See* Declaration of Dr. Ann Link in Support of Plaintiff's Motion for Leave to Take
10 Trial Depositions of Menona Landrum and Ann Link, Ph.D.

11 5) Due to their unavailability, Plaintiff respectfully requests leave to take trial
12 depositions of these two witnesses.

13 6) Plaintiff's counsel was unaware that either witness would be unavailable at the
14 time their discovery depositions were taken. Specifically, Plaintiff's counsel had no knowledge
15 that Ms. Landrum would be moving from Vancouver, Washington to California subsequent to
16 her deposition, or that Dr. Link would be traveling outside of the country at the time of trial.
17 Thus, Plaintiff's counsel did not examine the witnesses in the manner she would at trial. *See*
18 Declaration of Kathleen T. Zellner in Support of Plaintiff's Motion for Leave to Take Trial
19 Depositions of Menona Landrum and Ann Link, Ph.D.

20 7) There is more than adequate time to schedule these depositions, as trial is more
21 than two months away from the date of filing this motion. In anticipation of the motion,
22 Plaintiff's counsel has already contacted defense counsel regarding dates they would be
23 available to conduct the trial depositions.
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8) Plaintiff also seeks ruling on the admissibility of the trial depositions in lieu of the witnesses' testimony at trial.¹

9) The Federal Rules of Civil Procedure would permit the admission of Ms. Landrum's and Dr. Link's depositions at trial. FRCP 32 states in relevant part that "A party may use for any purpose the deposition of a witness, whether or not a party, if the court finds . . . (B) that the witness is more than 100 miles from the place of hearing or trial or is outside the United States; [or] (C) that the witness cannot attend or testify because of age, illness, [or] infirmity" Ms. Landrum is an "unavailable witness" under the rule because she resides more than 100 miles from the location of the trial, and due to her age and the health of she and her husband. Dr. Link is likewise unavailable because she resides more than 100 miles from the location of the trial, and because she will be traveling outside of the country during the course of the trial.

Conclusion

WHEREFORE, Plaintiff respectfully requests an order:

- 1) Granting him leave to take the trial depositions of Menona Landrum and Ann Link, Ph.D.; and,
- 2) Allowing Plaintiff to present the trial depositions of Menona Landrum and Ann Link, Ph.D. at trial in lieu of their testimony at trial.

Respectfully submitted,

/s/ Kathleen T. Zellner
Kathleen T. Zellner & Associates, P.C.
Admitted *pro hac vice*
1901 Butterfield Road

/s/ Daniel T. Davies
Daniel T. Davies, WSBA # 41793
Local counsel
David Wright Tremaine LLP

¹ Plaintiff is not seeking a ruling as to the admissibility of any specific portions of the deposition testimony at this time.

1 Suite 650
2 Downers Grove, Illinois 60515
3 Phone: (630) 955-1212
4 Fax: (630) 955-1111
5 kathleen.zellner@gmial.com
6 Attorney for Plaintiffs
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1201 Third Avenue, Suite 2200
Seattle, Washington 98101-3045
Phone: (206) 757-8286
Fax: (206) 757-7286
Email: dandavies@dwt.com
Attorney for Plaintiffs

DECLARATION OF SERVICE

I hereby certify that on November 5, 2013, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the attorneys of record as follows:

Guy Bogdanoich Law, Lyman, Daniel, Kamerrer & Bogdanovich, P.S. P.O. Box 11880 Olympia, WA 98508-1880 Email: gbogdanovich@lldkb.com Attorney for Defendant Sharon Krause	Jeffrey A. O. Freimund Freimund Jackson Tardif & Benedict Garratt, PLLC 711 Capitol Way South, Suite 602 Olympia, WA 98502 Email: jeffF@fjtlaw.com Attorneys for Defendant Michael Davidson
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/s/ Kathleen T. Zellner
Kathleen T. Zellner & Associates, P.C.
Admitted *pro hac vice*
1901 Butterfield Road
Suite 650
Downers Grove, Illinois 60515
Phone: (630) 955-1212
Fax: (630) 955-1111
kathleen.zellner@gmail.com
Attorney for Plaintiffs